Supreme Court, U.S.
FILED
NOV 14 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-763

Pansy Stone Chavez and
Thomas Tilford Stone, Petitioners

-vs-

United States of America

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

PANSY STONE CHAVEZ and THOMAS TILFORD STONE, the Petitioners herein, pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals, Tenth Circuit, in *United States of America* v. *Pansy Stone Chavez and Thomas Tilford Stone,* Nos. 78-1128 and 78-1129, entered on August 2, 1979, as amended by substitution of page 7 on September 6, 1979.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is printed in Appendix A hereto, infra, page 25. The Order of the United States Circuit Court of Appeals for the Tenth Circuit denying Petitioner Pansy Stone Chavez' Petition for rehearing dated September 6, 1979, is printed in Appendix A hereto, infra, pages 25-32. The mandate of the United States Court of Appeals pertaining to Thomas Tilford Stone, which originally issued on August 24, 1979, in CCA 78-1129 was recalled upon the Petition of Thomas Tilford Stone and reissuance stayed until October 5, 1979, pending Certiorari and thereafter the mandate was stayed until November 14, 1979, pending Certiorari. The original mandate affirming the judgment of the United States Circuit Court in the matter of the *United States v. Pansy Stone Chavez* ordering the surrender of said Petitioner on October 1, 1979, was recalled by the United States Circuit Court of Appeals Tenth Circuit and the reissuance thereof stayed until November 14, 1979, all upon the Petition of the said Pansy Stone Chavez.

JURISDICTION

The decision of the United States Court of Appeals Tenth Circuit was entered on August 2, 1979. Timely Petitions were filed to extend the Stay of Mandates to November 14, 1979. The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the trial court erred in denying Petitioner Pansy Stone Chavez' Motion for a Directed Verdict of Acquittal where she was charged with conspiring to import marijuana in violation of 21 U.S.C. §963 or that she possessed marijuana with the intent to distribute it in violation of 21 U.S.C. §841(a)(1) where the only circumstance suggesting the same was her physical proximity to the marijuana which was seized.

2. Whether the trial court erred in denying the Motion to Suppress by Petitioner Thomas Tilford Stone on the ground that the installation and use of electronic tracking devices, sometimes referred to as transmitters, transponders or beepers, constituted a violation of the Petitioner Stone's Fourth Amendment rights either at the installation of the beepers or by the continuous monitoring of the beeper devices on the aircraft owned by Petitioner Stone during a period of 72 days after the installation thereof.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the Constitution of the United States which provides as follows:

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The case further involves Title 47 U.S.C. §301, which is as follows:

301. License for radio communication or transmission of energy.—It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, territory, or possession of the United States, or from the District of

Columbia to any other State, Territory, or possession of United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act. (June 19, 1934, c.652, Title III, Part I, §301, 48 Stat. 1081.)

The case further involves 18 U.S.C. §2511 which states as follows:

§2511. Interception and disclosure of wire or oral communications prohibited.

(1) Except as otherwise specifically provided in this chapter (18 USCS §2510 et seq.) any person who—

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know,

that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than $10,000.00 or imprisoned not more than five years, or both.

This case further involves Article II, Sec. 10 of the Constitution of the State of New Mexico, which is as follows:

The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.

This case further involves Rule 17 of the New Mexico Rules of Civil Procedure which is as follows:

Rule 17. Search warrants; issuance; contents; form; execution; return.

(a) Issuance. A search warrant may be issued by the court to search for and seize property when the property: (1) has been obtained or is possessed in a manner which constitutes a criminal offense; (2) is designed or intended for use or which is or has been used as the means of committing a criminal offense; or (3) would be material evidence in a criminal prosecution. A search warrant shall issue only a sworn written statement of the facts showing probable cause for issuing the warrant.

(b) Contents. A search warrant shall direct a full-time salaried state or county law enforcement officer, a municipal police officer, a campus security officer or an Indian tribal or pueblo law enforcement officer to conduct a search of a designated person or place for the purpose of seizing designated property or kinds of property, and to deliver any property so seized to the court. A search warrant shall contain or have attached the sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. A search warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, but if the sworn written statement is positive that the property is on the person or in the place to be searched and states probable cause to believe that the property may be moved or destroyed unless seized immediately, the warrant may direct that it be served at any time.

(c) Form. A search warrant shall be substantially in the form approved by the court administrator.

(d) Execution. A search warrant shall be executed within ten days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.

(e) Return. The return shall be made promptly and in all events within three days after execution of the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person

from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer and the person or persons in whose presence the inventory was taken. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(f) Probable cause. As used in this rule, "probable cause" shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such additional evidence shall be reduced in writing and supported by oath or affirmation. (As amended, effective October 1, 1974)

This case further involves §§30-12-1 *et. seq.*, formerly §40A-12-1 N.M.S.A. (1953 Comp., 1976 p. 5), *et. seq.*

30-12-1. Interference with communications; exception.

Interference with communications consists of knowingly:

A. displaying, removing, injuring or destroying any radio station, T.V. tower, antenna or cable, telegraph or telephone line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto;

B. cutting, breaking, tapping or making any connection with any telegraph or telephone line, wire, cable or instrument belonging to another;

C. reading, hearing, interrupting, taking or copying any message, communication or report intended for another by telegraph or telephone without his consent;

D. preventing, obstructing or delaying the sending, transmitting, conveying or delivering in this state of any message, communication or report by or through telegraph or telephone; or

E. using any apparatus to do or cause to be done any of the acts hereinbefore mentioned or to aid, agree with, comply or conspire with any person to do, or permit or cause to be done any of the acts hereinbefore mentioned.

Whoever commits interference with communications is guilty of a misdemeanor, unless such interference with communications is done under a court order as provided in Sections 30-12-2 through 30-12-11 NMSA 1978, or unless such interference with communications is done by an operator of a switchboard or an officer, employee or agent of any communication common carrier in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his services or to the protection of rights or property of the carrier of such communication.

30-12-2. Grounds for order of interception.

An ex parte order for wiretapping, eavesdropping or the interception of any wire or oral communication may be issued by any judge of a district court upon application of the attorney general or a district attorney, stating that there is probable cause to believe that:

A. evidence may be obtained of the commission of:

(1) the crime of murder, kidnapping, extortion, robbery or unlawful trafficking of controlled substances;

(2) the crime of burglary, aggravated burglary, rape, arson or mayhem, if punishable by imprisonment for more than one year; or

(3) an organized criminal conspiracy to commit any of the aforementioned crimes; or

B. the communication, conversation or discussion is itself an element of a specified crime.

30-12-3. Form of application.

Each application for wiretapping, eavesdropping or the interception of any wire or oral communication shall be made in writing upon oath or affirmation to a judge of a district court and shall state the applicant's authority to make such application. Each application shall include:

A. the identity of the investigative or law enforcement officer making the application and the officer authorizing the application;

B. a complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(1) details as to the particular offense that has been, is being or is about to be committed;

(2) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(3) a particular description of the type of communication sought to be intercepted; and

(4) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

C. a complete statement as to whether other investigative procedures have been tried and failed, or reasonably appear unlikely to succeed if tried, or appear to be too dangerous;

D. a statement of the period of time for which the interception is required to be maintained; if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter shall be required;

E. a complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, which were made to any judge for authorization to intercept or for approval of interceptions of wire or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the judge on each such application; and

F. where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

The judge may require the applicant to furnish additional testimony of documentary evidence in support of the application.

30-12-4. Entry of order; determination.

Upon application, the judge may enter an ex parte order, as requested or as modified authorizing or approving wiretapping, eavesdropping or the interception of wire or oral communications within the district in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

A. there is probable cause for belief that a person is committing, has committed or is about to commit a particular offense enumerated in 30-12-2 NMSA 1978;

B. there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

C. normal investigative procedures have been tried and failed, or reasonably appear unlikely to succeed if tried, or appear to be too dangerous; and

D. there is probable cause for belief that the facilities from which, or the place where the wire or oral communications are to be intercepted is being used or is about to be used in connection with the commission of such offense, or is leased to, listed in the name of or commonly used by the person alleged to be involved in the commission of the offense.

30-12-5. Contents of order.

A. Each order authorizing or approving wiretapping, eavesdropping or interception of wire or oral communications shall specify:

(1) the identity, if known, of the person whose communications are to be intercepted;

(2) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(3) a particular description of the type of com-

munication sought to be intercepted and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(5) the period of time during which such interception is authorized, including a statement as to whether the interception automatically terminates when the described communication has been first obtained.

B. An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at the prevailing rates.

30-12-6. Order; extension; requirements.

No order entered under this act (30-12-1 to 30-12-11 NMSA 1978) may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension, made in accordance with Section 30-12-3 NMSA 1978, and if the court makes the findings required by Section 30-12-4 NMSA 1978. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purpose for which it was granted, and in no event longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception under this act and shall terminate upon attainment of the authorized objective, or in any event within thirty days.

Whenever an order authorizing interception is entered pursuant to this act, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at such times as the judge may require.

STATEMENT OF CASE

This is a criminal case brought by the United States in the Federal Judicial District of New Mexico. The Petitioners herein are brother and sister. They were tried before the Judge without a jury in the United States District Court in Albuquerque, New Mexico, under a multi-count indictment. Petitioner, Thomas Tilford Stone was charged with conspiracy to import marijuana, possession with intent to distribute marijuana, and unlawful importation of marijuana, all in violation of 21 U.S.C. §§963, 952(a), 96(a)(1) and 841(a)(1). Petitioner Pansy Chavez was charged with conspiracy to import marijuana and possession with intent to distribute marijuana. (Tr. Vol. I, p. 1.)

The briefest, simplest statement of the case of Petitioner Pansy Stone Chavez is that there is simply no evidence in the record to indicate that Petitioner Chavez committed any crime, but rather that she was present in close proximity to the scene of a crime which was committed in part on an isolated piece of land owned by her brother, Petitioner Thomas Tilford Stone. (Tr. Vol. I, pp. 124-27.) The government offered absolutely no proof of the conduct of the defendant other than merely being there and being related to her brother, Petitioner Stone. The record reflects that the Petitioner Chavez did nothing in the present case other than that which was required of her by the law enforcement officer who forced her to lie down face down on the ground on the side of the house trailer in the vicinity of where the plane landed. (Tr. Vol. I, pp. 124-125 testimony of the police detective.) In short, Petitioner Chavez urges that the United States Supreme Court correct an injustice which arises from a departure from the clearly defined and unanimously accepted law of all of the Circuit Courts and

of the United States Supreme Court. This matter is discussed more fully herein below.

In order to approach the main issue on appeal of Petitioner Thomas Tilford Stone, it is necessary to discuss in greater detail the occurrences which led to his arrest and subsequent conviction. The main issue presented by Petitioner is that the defendants at trial (the Petitioners herein), filed a joint Motion to Suppress all items and information which were obtained by the government as a result of the installation and monitoring of the listening devices on the aircraft (Tr. Vol. I, pp. 14-16) on the grounds that the Fourth Amendment rights of the Petitioners were violated thereby.

The manner in which said rights were violated, your Petitioner urges, embrace the following fatal weaknesses of the referenced State Court order:

a. The installation and monitoring of the beeper device constituted a search and seizure in violation of privacy rights of Petitioners which Petitioners claim are protected under the provisions of the Fourth Amendment.

b. The State Court order authorizing the installation and monitoring of the devices was void *ab initio* for the reasons that: (1) the Court lacked specific statutory authority to enter the subject order because the Federal government has asserted control over the airwaves generally and no exception thereto is appropriate; (2) Probable cause for the order permitting the monitoring of the device had become stale 72 days after the order issued; (3) the order by the State Court Judge violates elementary principals of international law in approving the intrusion of the electronic informant into the Republic of Mexico; (4) no New Mexico statutory or constitutional provision(s) authorize the State Court to enter the subject order.

The factual background of the origin of the order is that an Albuquerque police detective became suspicious of the fact that a small aircraft, a Piper Comanche, which was tied down on the runway aprons at the Albuquerque Airport was usually gone on weekends. The detective made further investigation and determined that Petitioner Stone had purchased the aircraft for cash and that he paid his

fees and expenses for the aircraft in Albuquerque on a cash basis, a suspicious circumstance apparently in the light of the credit card economy. In the course of his investigation, the Albuquerque detective conferred with a United States Customs Agent, and learned that the Customs Agent had been conducting an independent investigation involving another Piper Comanche which was tied down at a different hanger at the same airport and which also was reportedly flown on weekends. The Customs Agent had made inquiry and determined that the aircraft had been purchased for cash by a person whose description met that of Petitioner Stone. (Tr. Vol. II, p. 13, Tr. Sup. Vol. I, pp. 3-29.)

The two enforcement officers examined the aircraft originally taken note of by the Albuquerque detective and concluded that marijuana seeds and stems were on the floor of the aircraft. The agents then determined to establish surveillance on the two aircraft, and, on May 1, 1977, the detectives boarded a United States Customs aircraft and tailed the two aircraft they had previously had under surveillance on the ground. They followed the aircraft into the Mexican interior, approximately 325 miles. The aircraft landed and were observed taxiing to a third aircraft.

Hours later, the two aircraft departed the landing area and flew in a northerly direction to the United States, but the surveillance was cut off because the customs aircraft ran low on fuel. Some time later, the two aircraft were returned to the tie-down locations at Albuquerque Airport.

Based on that surveillance and the prior investigation, the detectives filed the Affidavits (Tr. Vol. II, P. 13, Tr. Sup. Vol. I, pp. 3-29), and requested an Order to Permit their installation of electronic surveillance equipment, transponders and/or beepers inside the aircraft. A State District Judge issued an Order to authorize installation and utilization of "a beeper transmitter" in the aircraft by qualified, expert customs personnel. The first Order had a time limitation of 60 days and subsequent thereto the aircraft tracking equipment was installed and the surveillance undertaken. It was not a fruitful effort and just prior to the termination of the original order, on June 26, 1977, the detectives requested that the Court extend the surveillance

order and in connection therewith, they stated that the goals of the investigation had not transpired, and it is to be noted that there were no drug smuggling flights by these aircraft into Mexico since the issuance of the original order on May 3, 1977. The State District Court extended its orders for sixty additional days. Seventy two days after the original order had issued, the aircraft, under surveillance, flew from Albuquerque Airport to Mexico with the agents pursuing in the customs aircraft coming to rely exclusively on the beeping devices in following the aircraft under surveillance. There were times when the agents lost all contact with the planes, however, at approximately 7:00 p.m., the aircraft were monitored moving towards Albuquerque in a northerly direction, and one of the aircraft apparently split off. (Tr. Vol. II, p. 13, Supp. Vol., I, pp. 3-29.) One of the aircraft was monitored via the beeper as it headed into a field in the vicinity of McIntosh, New Mexico. The other aircraft was not observed during the rest of the day. The first aircraft landed near a house trailer on an airstrip and law enforcement officers converged on the area by helicopter, and confiscated a large quantity of marijuana in the process of being unloaded, and arrested the pilot and Petitioner Chavez. Others, observed by police from the air, fled. The Appellate Court hereinbelow concluded that Petitioner Stone was flying one aircraft, became suspicious and split off making an emergency landing miles from the airstrip where he had intended to land. However, his associate, flying the other aircraft landed at the field on the Stone property near McIntosh and someone on the ground turned on a string of lights. The plane landed, the police arrived, and the events of arrest ensued.

On Appeal, the Tenth Circuit Court of Appeal's opinion rested on three grounds, which are as follows:

(1) The Petitioner Stone had urged that there was an unreasonable search and that the Affidavit for the extension order was insufficient on legal grounds to warrant the extension order. The Circuit Court "assumed" a privacy right which warranted protection but ruled the extension order was supported by sufficient Affidavits and proper, *albeit* applying hind sight by its own admission.

(2) The second ground upon which the appeal to the

Tenth Circuit Court of Appeals by Petitioner Stone was grounded was on the basis that the extension order contained no fixed time limitations, which argument concededly was based on an erroneous premise in that the order did call for a 60 day limitation. That ground is abandoned herein.

(3) The third ground urged for holding that the installation of the beeper was improper was a failure to comply with the provisions of Fed. R. Crim. p. 41(b). Counsel below argued that the authorization order and the extension order were based on Affidavits of local police officers and that the rule authorized the issuance of a warrant only upon the request of a federal law enforcement officer or an attorney for the government. The appellate court ruled that the state court had entered the order and it was not tied to the federal rule cited and went further to say that the fact that federal authorities participated in the tracking of the airplanes properly did not affect the validity of the state court orders.

Accordingly, the judgment and convictions of both Petitioners were affirmed by the Tenth Circuit Court of Appeals on August 2, 1979.

By hind sight, Petitioner Stone believes that his appeal to the Tenth Circuit was unnecessarily restricted as to the grounds urged in supporting the assertion that his Fourth Amendment rights were violated. Petitioner Stone also realizes that this Petition is necessarily limited to those matters which were considered by the Court of Appeals, as set forth in the record herein below. However, since the matter of the Fourth Amendment violation based on the contention that the State Court Order was void, as urged in points a and b(1) through (4), supra., p. 8, your Petitioner seeks a review of the question of the Fourth Amendment violation in extensive scope.

REASONS FOR GRANTING WRIT

Because of the fact that the cases in the several Circuit Courts of Appeal demonstrate an inconsistency throughout

the nation on the issues of Fourth Amendment protection involving beeper devices, the Supreme Court should review this cause at bar, in order to clarify the issue, and to furnish guidelines which would appear to be necessary at this point for the effective enforcement of law where transponders on aircraft and moving vehicles are employed, for the good of law enforcement and for the preservation of the Fourth Amendment protection of the citizenry.

Additionally, your Petitioners urge this Honorable Court to consider their Petition on Certiorari for several reasons as follows:

1. The affirmation of the conviction of Petitioner Pansy Chavez by the Tenth Circuit Court of Appeals so lacks in compliance with the case law in the Tenth Circuit and as established by the United States Supreme Court and followed by all other circuits, that not only has Petitioner Chavez been denied her rights to equal protection under the laws, but also, the Tenth Circuit Court has grievously failed to follow precedent. Nowhere in recent years has anyone's conviction been affirmed where the evidence showed nothing more than the presence of the defendant at the scene of a crime. The Supreme Court of the United States should exercise its supervisory powers over the Tenth Circuit Court of Appeals by requiring that the Tenth Circuit to follow the precedent where that law is so clearly and repetitively set forth in all of the case law (which is available to your Petitioners).

It is undisputable in the Tenth Circuit case law precedent that a possessory offense cannot be inferred simply from an individual's proximity to contraband. The United States Supreme Court has specifically held that a criminal conviction for a possessory offense may not be sustained merely upon proof of physical presence at the scene of the alleged offense. *United States v. Romano,* 382, U.S. 136, 141, 15 L.Ed. 2d 210, 86 S.Ct. 279 (1965). The applicable Tenth Circuit Cases include: *United States v. Castillo,* 524 F. 2d 286, 288 (10th Cir. 1975); *United States v. McMahon,* 562 F. 2d 1192, 1195 (10th Cir. 1977); *United States v. Wright,* 450 F. 2d 992, 994 (10th Cir. 1971); and *Lucero v. United States,* 311 F. 2d 457, 459 (10th Cir. 1962), cert. den. 372 U.S. 936. *United States v. Butler,* 494 F. 2d 1246, 1252 (10th Cir. 1974).

2. With reference to the validity of the State Court order, i.e., Petitioner Stone's main ground for appeal, it is noted that the United States Supreme Court set forth certain standards in *Katz v. United States,* 389 U.S. 347 (1967), in its majority opinion. At present, the standards, criteria, or tests applied by the several circuits vary greatly from the *Katz* standards and aircraft surveillance by the use of transponders has been rationalized on several sometimes mysterious grounds. In one case, for example, in *United States v. Clayborn,* 584 F. 2d 346, 351 (10th Cir. 1978), the Tenth Circuit thought that there was no reasonable expectation of privacy where the aircraft is airborn, in that aircraft should not surreptitiously venture into unassigned airspace at the risk of collision. The test applied would appear irrelevant in that matters of regulation by enforcement agencies did not appear in the record. At minimum, in the case at bar, judicial notice should be taken of the fact that the Federal Aviation Agency does not require flight plans in some sectors, nor does it require radio communications. In the absence of that requirement, it cannot be said that an aircraft is risking (by intrusion into an airspace) collision related to lack of communication equipment.

Similarly, many circuits have erroneously applied the concurring opinion test of *Katz* set forth by Justice Harlan where there is a balancing test applied of exhibited expectation of privacy *viz a viz* expectation that society is prepared to recognize the privacy expectation as reasonable. No where in the majority opinion does that test appear.

Stated succinctly, this present case at bar seems to highlight the underlying problem which frequently surfaces in the beeper cases which is, that privacy claims are raised by convicted persons, and some courts appear to find it appealing to overlook the costs to society of allowing searches which are warrantless or where the warrant is issued in the absence of a showing of probable cause or an inquiry by the issuing judge or magistrate as to whether the defendant expected privacy and sought to preserve it.

Many lower courts inquire as to whether the facts taken as a whole justified a reasonable expectation of privacy, e.g., *United States v. Magana,* 542, F. 2d 1169, 1171, (9th Cir. 1974); *United States v. Hanahan,* 442 F. 2d 649, 653 (7th Cir. 1971); *United States v. Bruneau,* 594 F. 2d 1190 (8th Cir. 1979); *United States v. Huford,* 19 Cr. L. 2447 C.A. 9, July 26, 1976; *United States v. Bobisink,* 415 F. Supp. 1334 (U.S.D.C. Mass. 1976), employing a "proper balance between the rights of the individual and of the government" test. This misapplication of the Harlan test requires the attention of this Honorable Court.

But why in this case should the Court act? The justifications are that there was a violation of a rule-embodied policy designed to protect the integrity of the federal courts, coupled with a violation of international law. It is urged that a state court cannot issue an order on the basis of either state or federal Affidavits as occurred in the case at bar, but rather that any order for the installation of beepers, or transponders must issue, if at all, by a federal court.

The reason for the requirement that a federal court order be obtained for the installation of such electronic devices is twofold. Firstly, the beeper uses radio waves which are subject to federal regulations, such federal control having been asserted over radio communications by the provisions of 47 U.S.C. §301 (1970), which deals with radio communications in interstate communications, and intrastate communications that affect or interfere with interstate communications and communications from mobile stations. Where a state court issues an order for the installation and monitoring of a beeper, the state court is authorizing the use of federally controlled radio communications, (1) without the benefit of licensing or other regulatory requirements being complied with, and (2) without compliance with established rules.

3. Thirdly, the writ should be considered because, as urged hereinabove, the Petitioner's privacy was invaded after the seventy two days of surveillance. Any possible original jurisdiction by the state court was lost when the probable cause became "stale".

With reference to the second reason for granting the Writ, i.e., the invalidity of the State Court Order, these facts are significant.

In the case at bar, the Assistant District Attorney in Albuquerque joined in the Affidavits submitted by the police officers in support of their request for the order for installation and monitoring of the beepers. (Tr. Vol. II, pp. 10-13.) He testified that there was no statutory authority addressed to the legality of a court order for this type of electronic surveillance (Tr. Vol. II, p. 16) and that he used as a model, the New Mexico wiretap statute, §40A-12-1, N.M.S.A. (1953 Comp., 1976, p. 5), *et seq.,* but that statute was not the authority upon which he relied (Tr., Vol. II, p. 16).

The question presented then is: On what authority was the order issued?

A careful reading of the pertinent part of the Constitution of New Mexico, Article II, Sec. 10, *op. cit.,* pp. 4-6, disqualifies that provision as authority in that, in pertinent part, it is provided therein that no warrant may issue unless the place to be searched or the person or things to be seized, are described.

There is no "thing" involved unless it is the "thing" is the information as to the location of the aircraft.

The "place searched presumably is the item to which the beeper is attached, i.e., the aircraft, although no New Mexico judicial interpretation has been found.

In the absence of New Mexico statutory provisions dealing with the use of beepers for electronic surveillance and without judicial interpretation of the constitutional provision the government's State Court order is vulnerable to attack by Petitioner Stone on the ground it is void *ab initio.,* and the Motion to Suppress the fruits of the search should have been granted.

In the Federal jurisdiction, the Congress dealt with the issue of electronic surveillance when it passed the *Omnibus*

Crime Control Bill of 1968, at U.S.C. §2516 which specifically provided (1) what federal and state officials may apply for an order for the interception of wire (and oral communication) and the nature of crimes for which they might seek evidence in this manner (18 U.S.C. §2517); (2) the extent to which the interceptions could be disclosed or used; (3) the procedure for obtaining the order for interceptions; (4) for the placement of recordings thereof with the Court and their sealing and storage; and (5) for an inventory to be furnished the parties.

The congress appears to have limited the use of wiretapping and electronic surveillance as to law enforcement information gathering systems. In the cited Act, judicial orders were approved where crimes dangerous to life, limb and property are involved and permits federal judges to approve interceptions for specified Federal Crimes and state judges for specified State crimes. The orders need specify the person, the nature of the facility where interception is to take place, the type of communication, the identity of the agency and person applying, the period of time interception is authorized and whether or not interception shall automatically terminate when the described communication has been first obtained. (18 U.S.C. §2518(4).)

Since the beeper's secrecy enhances the potential for abuse, it is demonstrable that standardized procedures which are systematically enforced should be established. In fact, they have been established for federal drug enforcement personnel by the terms of the Drug Enforcement Administration Domestic Operations Guidelines, December 28, 1976, 20 Cr. L. F. (BNA) 3055, 3058 (February 2, 1977) requiring approval of the group supervisor or higher authority or of a federal court order in the nature of a warrant, if the installation involves a trespass or if otherwise required by federal case law.

New Mexico has a state statute, §30-12-1 *et. seq.*, banning wiretaps without court order. The statute sets forth the circumstances under which a court may permit law enforcement agencies to tap wires—that statute and the state court orders, like those in other states are severely restricted in scope because of the Fourth Amendment.

Berger v. New York, 388 U.S. 41, 18 L.Ed. 2d 1040, 87 S.Ct. 1873. But, New Mexico has no statute setting forth standards and requirements for beeper surveillance.

It is to be noted that under 18 U.S.C. §2516(2) the principal prosecuting attorney of any state or political subdivision *if* authorized by state statute, may apply to a state court judge of competent jurisdiction for an interception order and the state court may grant it in conformance with 18 U.S.C. §2518. It has been held that where state officials obtain an order for a wiretap under a state statute, the order must contain the limitations of the federal statute (18 U.S.C. §2518) concerning the length of surveillance, the monitoring of interceptions of immaterial calls etc., 226 Ga. 805, 177 S.E. 2d 699.

Clearly, the condition precedent to the application of a state official to a state court judge for beeper installation and monitoring should be a pre-existing state statute, just as in the wiretapping situation. In New Mexico, there is none. *ergo* 18 U.S.C. §2516(2) did not furnish authority to the State Court.

The warrant procedures set forth in 18 U.S.C. §2517, embody the judicial guidelines set forth in *Berger v. New York,* 388 U.S. 41, 60 (1967) and the *Berger* case requires a showing of exigency to justify not informing a suspect of electronic surveillance. Accordingly, some would conclude that not only was statutory authority for beeper surveillance not available to the government in the case at bar, as argued hereinabove, but also, if it were, the government did not demonstrate an exigency, as defined in *Berger v. New York, op. cit.*

There is good reason for the condition precedent (a state statute) to jurisdiction of a state court to enter a "beeper" warrant—the radio waves are subject to federal regulations (per 47 U.S.C. §30 (1970), which requirements go beyond the minimum standards of *Berger* and *Katz* and parallel the requirements of the Omnibus Crime Control and Safe Streets Act of 1968, Title III §801(a). The same considerations militating for statutory constraints on wiretapping justify statutory constraints on "beeper" tracking,

the considerations referred to being protection of privacy interests and uniform guidelines for police and courts.

The attempt by the State officials, the assistant District Attorney in the case at bar, to follow the procedures set forth in the New Mexico wiretapping statute is laudible. However, the government simply had no vehicle for use—no state statutory authority, and consequently no access to the state court. In the absence of controlling federal standards, the lawfulness of a search is determined by state law. *United States v. Hooper* (D.C. Tenn.) 320 F. Supp. 507 affd. 438 F. 2d, 968, cert. den. 400 U.S. 929, 27 L.Ed. 2d 190, 91 S.Ct. 186).

What resulted was the issuance of a general warrant which no responsible legalist would attempt to legitimize.

Moreover, the state court judge lacked authority to issue an order involving a search in a foreign country, *id est.*, the Republic of Mexico. The Affidavits in support of the order informed the State Court Judge of the prior intrusion by the customs aircraft which tailed the Petitioner's aircraft at an earlier time. (Tr. Vol. I, pp. 14-16) and the investigators' intent to do it again, this time with the help of an informant, the "beeper".

Subject to exceptions where consent of other nations is expressed on implied the jurisdiction of a nation is confined within the bounds of its own territory. It is true that a state has jurisdiction to impose liabilities on persons for conduct outside its borders which other states (nations) recognize. (*United States v. Aluminum Company of America* (CA 2 NY) 148 F. 2d 416.) But all courts are bound to take judicial notice of the territorial extent of jurisdiction exercised by the government whose laws they administer. *Jones v. United States,* 137 U.S. 202, 34 L.Ed 691, 11 S.Ct. 80.

By analogy, it is reasoned that if in *Katz, supra.,* the government's activities in electronically listening to a conversation in a phone booth constituted a search and seizure, then electronically listening to a beeper in Mexico constituted a search and seizure in Mexico.

Nowhere in the record does evidence appear that the consent of the Republic of Mexico was expressly or impliedly given to the State Court Judge in New Mexico to approve of the sending of an electronic informer into the interior of Mexico.

By international law, every sovereign is bound to respect the sovereignty of another nation. *Varas v. Crown Life Insurance Company,* 204 Pa Super. 176, 203 A 2d 505, cert. den. 382 U.S. 827, 15 L.Ed. 2d 72, 86 S.Ct. 62. That concern was not exhibited by the State Court in New Mexico. Rather it can be said that because of the far reaching capabilities of the electronic device (beeper) the New Mexico State Court effectively authorized a search of the Republic of Mexico. Presumably the Petitioner would be subject to charges for criminal violations in taking an electronic device into Mexico without Mexican approval, had he been searched by the Federales there. The United States then had the duty to protect the sovereignty of Mexico and the duty to protect the privacy rights of Petitioner Stone. The State Court had no place in the scheme which was developed in the case at bar by the police because it lacked jurisdiction, and on that basis the order was void.

CONCLUSIONS OF LAW

1. The evidence at trial was insufficient to permit the inference that Petitioner Chavez was a criminally culpable participant in the illicit activity. The motion for a directed verdict should have been granted, and accordingly, the judgment and conviction should be reversed.

2. The Motion to Suppress filed by the Defendants at trial (the Petitioners herein), on the grounds that the installation and use of the beeper violated Fourth Amendment rights should have been granted, and all items and evidence obtained therefrom excluded, on the grounds that;

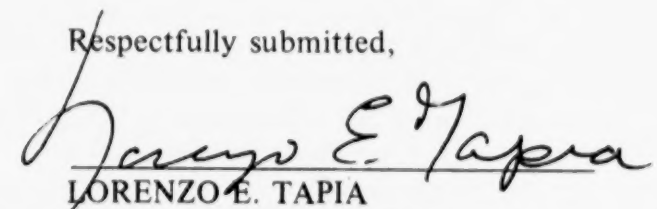
(a) The State Court order was void for the reason the Court lacked jurisdiction in the absence of statutory authority, to enter the order authorizing installation and monitoring of the beeper because the subject has been

pre-empted to the Federal Government and no exception to Federal law appears in the record.

(b) The State Court order purported to authorize the monitoring of the beeper during a period of 120 days. In light of the content of the Affidavits filed in support of the motion for the order, the monitoring of the beeper in the Republic of Mexico was clearly contemplated. Such activity violated the sovereignty of the Republic of Mexico, and therefor was void *ab initio*.

(c) The probable cause urged at the time the order authorizing the installation and monitoring of the beepers became stale upon its expiration and the order extending its effect was void in the absence of a new showing of probable cause.

Respectfully submitted,



LORENZO E. TAPIA
Member Bar Supreme Court
of the United States
For the Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

Nos. 78-1128 and 78-1129

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	Appeal from the
v.	)	United States District
	)	Court for the District
PANSY STONE CHAVEZ and	)	of New Mexico
THOMAS TILFORD STONE,	)	(D.C. No. CR-77-277)
	)	
Defendants-Appellants.	)	

David N. Williams, Assistant United States Attorney (Victor R. Ortega, United States Attorney, on the brief), for Plaintiff-Appellee.

Clarence D. Moyers (Gerald M. Birnberg, on the brief), for Defendants-Appellants.

Before McWILLIAMS, BREITENSTEIN and McKAY, Circuit Judges.

McWILLIAMS, Circuit Judge.

Thomas Tilford Stone and his sister, Pansy Stone Chavez, along with two others, were charged with a number of violations of the Federal Controlled Substances Act. In a trial to the court Stone was convicted of conspiring to import marijuana, importing marijuana and possession of marijuana with an intent to distribute. 21 U.S.C. §§841(a)(1); 952(a); 960(a)(1); 963. His sister, Pansy Stone Chavez, in the same trial was convicted of conspiring to import marijuana and possessing marijuana with an intent to distribute. 21 U.S.C. §841(a)(1); 963. The charges against the remaining two defendants were disposed of without trial. Stone and his sister appeal their respective convictions.

The main issue on appeal concerns the use of an electronic tracking device, sometimes referred to as a transmitter or a transponder, and more popularly referred to as a "beeper". A beeper had been attached to three small aircraft which were used by the defendants to transport marijuana from Mexico into the State of New Mexico. Prior to trial the defendants filed a motion to suppress on the ground that the installation and use of the beeper violated Fourth Amendment rights. After an evidentiary hearing, the trial court denied the motion to suppress. This ruling is the only matter urged by Stone on appeal as ground for reversal. The only ground for reversal urged by Stone's sister, Ms. Chavez, is the alleged insufficiency of the evidence tying her in with the crimes charged in the indictment.

This particular investigation was initiated by one Mike Dwyer, detective in the Albuquerque Police Department. Dwyer was suspicious that certain small aircraft, which were either owned by Stone or made available to him, were being used to transport marijuana from Mexico into New Mexico. The planes were tied down on runway aprons at the Albuquerque airport. During the course of his investigation Dwyer conferred with one Harold Briscoe, a United States Customs Air Officer.

Based on the results of his continuing investigation, Dwyer made application to a New Mexico State District Judge for an order authorizing the installation of a tracking device on or in the three aircraft. Dwyer and a fellow detective on the Albuquerque police force submitted a

lengthy affidavit to the state judge in support of their request for an authorization order. This affidavit was also signed by Agent Briscoe. An order issued authorizing the installation and monitoring of a tracking device in the three aircraft for a sixty-day period. Shortly prior to the expiration of the sixty-day period, Dwyer by written application, requested a sixty-day extension of the authorization order. This request for an extension was supported by Dwyer's lengthy affidavit, which, *inter alia,* incorporated by reference the recitals in the first affidavit and also recounted events which had transpired within the intervening sixty days. Based on these representations, the state judge extended the authorization order for an additional sixty days.

Shortly after the extension order, on July 10, 1977, Dwyer's investigative efforts bore fruit. On that date Stone and another person took off in two of the small aircraft from the Albuquerque airport, with a beeper attached to each craft. These two planes flew into Mexico, landed and picked up a load of some 1,400 pounds of marijuana and then flew back to New Mexico. Law enforcement authorities followed the two aircraft and were materially aided in their pursuit by monitoring the beeper signals.

En route back, Stone became suspicious that he and his associate were being followed. Accordingly, Stone split off and made an emergency landing some miles away from the makeshift airstrip where he had intended to touch down. Stone's associate, however, proceeded on course and landed at the clandestine landing field located on Stone's property near McIntosh, New Mexico. The authorities followed, again aided by use of the beeper, and their plane flew over the area where the other plane had just landed. Apparently believing that the second plane was the one piloted by Stone, someone on the ground turned on a string of lights which were intended to aid in night landing. In the meantime the pursuing enforcement officials had radioed thier location to others, and as a result, police using helicopters closed in on the landed aircraft. As they descended, the officers, by use of search lights, observed persons unloading marijuana from the plane into a truck. Several persons fled, but Pansy Stone Chavez and the pilot of the plane were arrested at the scene, and approximately 800 pounds of

marijuana were seized.*

On appeal Stone contends that the installation of the beeper and the surveillance of his plane through use of the beeper for a period of approximately 70 days after the original authorization order was improper on three grounds: (1) the affidavit in support of the extension order was insufficient; (2) the extension order was issued for an unspecified length of time and was therefore unreasonable; and (3) neither the application for authorization to install the beeper, nor the application to extend the time that the beeper could be used, complied with Fed. R. Crim. p. 41(b).

Although we propose to dispose of this appeal on the basis that it has been presented to us, we recognize the more basic underlying question of whether the installation of a beeper on an airplane, or an automobile, and use of that beeper to monitor the movement of an airplane, or automobile, is a "search" within the meaning of the Fourth Amendment. This is a subject upon which there is some diversity of judicial thinking. See, for example *United States v. Bruneau,* 594 F. 2d 1190 (8th Cir. 1979), where under the facts of that case neither the installation of the beeper or its subsequent use was held to be a "search" within the meaning of the Fourth Amendment. However, in *United States v. Holmes,* 521 F. 2d 859 (5th Cir. 1975), the Fifth Circuit, *inter alia,* upheld the ruling of the trial court that the installation of a beeper on a motor vehicle was a search within the meaning of the Fourth Amendment. Upon rehearing in *Holmes,* the Fifth Circuit by an equally divided court upheld the trial court's suppression order. *United States v. Holmes,* 537 F. 2d 227 (5th Cir. 1976). For a general discussion of this entire matter, see Note, *Tracking Katz: Beepers, Privacy, and the Fourth Amendment,* 86 Yale L. J. 1461 (1977).

For the purpose of our present discussion, we shall assume, without deciding, that the installation of the beepers

*The remaining 600 pounds of marijuana and Stone's disable aircraft were recovered on July 12, 1977, through the aid of the beeper which continued to transmit following Stone's crash landing. Stone surrendered to the authorities.

and their use in the present case constituted a "search" within the meaning of the Fourth Amendment. As indicated, we shall then dispose of this appeal on the basis that it has been presented to us. The first ground urged for finding that this was an unreasonable search is that the affidavit for an extension order was legally insufficient to warrant the extension order. We do not agree. The supplemental affidavit in support of the extension order, as well as the affidavit in support of the original authorization order, have been examined and we find each more than adequate. Each affidavit consists of some six pages and both contain commendable detail. The fact that nothing developed within the initial 60-day period does not in itself defeat the request for an extension. The extension order was fully justified on the basis of the affidavits, and the wisdom in issuing it was demonstrated, admittedly via hindsight, when ten days after its issuance, Stone and his associate took off for Mexico and smuggled into the United States some 1,400 pounds of marijuana.

Complaint is also made that the extension order was open-ended and contained in time limitation. It is argued that such fact, in itself makes the extension order unreasonable. The supplemental record clearly indicates, however, that the extension order contained the same time limitation as did the original order, namely 60 days. This argument, then, is apparently based on an erroneous premise.

The third ground urged for holding the installation and use of the beeper to be improper is the failure to comply with the provisions of Fed. R. Crim. p. 41(b). Specifically, counsel argues that the authorization order and the extension order issued by the state court of record were based on the affidavits of two Albuquerque police officers, and that Rule 41(a) only authorizes the issuance of a warrant upon the request of a "federal law enforcement offficer or an attorney for the government." The answer to this argument is that the state court orders here in question did not purport to be issued pursuant to Rule 41. They were issued pursuant to state law, at a time when the investigation was essentially a state investigation. *United States v. Millar,* 543 F. 2d 1280 (10th Cir. 1976). The fact that federal authorities participated in the tracking of the airplanes

does not affect the validity of the state court orders previously issued.

The fruits of a search conducted under the authority of a validly issued state warrant may be used in a federal prosecution if the warrant satisfies constitutional requirements and does not violate any rule-embodied policy designed to protect the integrity of federal courts or to govern the conduct of federal officers. *United States v. Sellers,* 483 F. 2d 37 (5th Cir. 1973). We are here concerned with a state court order, validly issued under state law, which order has no constitutional infirmity and does not violate any rule-embodied policy designed to protect the integrity of federal courts or to govern the conduct of federal officers. The argument that the state court orders were issued on the basis of affidavits of state officials, as opposed to federal officers, is unavailing.

The only ground urged by Ms. Chavez for reversal is the sufficiency of the evidence. Ms. Chavez was arrested at the scene where the first plane had landed on a makeshift landing field located in a remote area near McIntosh, New Mexico. As above mentioned, persons were in the process of unloading the marijuana from the plane onto a truck when the authorities arrived. Several of those who were assisting fled the scene, but Ms. Chavez and the pilot of the plane were apprehended and placed under arrest.

The landing field was in a very remote area. Lights had been strung along the airstrip to assist in night landing. A house trailer was adjacent to the landing strip. Ms. Chavez' brother, Stone, owned the land in question. It was the Government's theory of the case that Ms. Chavez was a part of the "ground crew". We think the evidence logically permits such an inference. Ms. Chavez exercised her admitted constitutional right not to testify. However, having done so, she cannot now complain that the jury, based on a permissible inference drawn from the Government's evidence has found her guilty.

Judgment affirmed.

REPAID SEP 10 1979
RECEIVED SEP 10 1979

United States Court of Appeals
TENTH CIRCUIT
OFFICE OF THE CLERK
459 UNITED STATES COURTHOUSE
DENVER, COLORADO 80202

HOWARD K. PHILLIPS
CLERK

TELEPHONE
303-837-3157

September 6, 1979

TO: ALL RECIPIENTS OF THE CAPTIONED OPINION

RE: No. 78-1128, U.S.A. vs. Pansy Stone Chavez
78-1129, U.S.A. vs. Thomas Tilford Stone

Attached is a new page 7 to be substituted for page 7 in the original opinion which was filed August 2, 1979.

Very truly yours,

Howard K. Phillips

HOWARD K. PHILLIPS, Clerk

HKP:ve

Attachment

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Judgment affirmed.

UNITED STATES DISTRICT COURT
for District of New Mexico

United States of America,

Plaintiff,

v. No. CR 77-277

Thomas Tilford Stone,
aka George Martin, aka Ron Davis,

Defendants.

Judgment and Probation/Commitment Order

Counsel:

In the presence of the attorney for the government the defendant appeared in person on January 19, 1978, with Vince D'Angelo, retained counsel.

Plea:

Not Guilty.

Finding & Judgment:

There being a finding of Guilty.

Defendant has been convicted as charged of the offenses of conspiracy to import marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. 963, as charged in Count I of the Indictment filed on Nov. 1, 1977, importation of marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. 952(a) and 960(a)(1), as charged in Count II of said Indictment, and possession with intent to distribute marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. 841(a)(1), as charged in Count II of the Indictment.

Sentence or Probation Order:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a

period of five (5) years as to each of Counts I, II and III, periods of confinement to run concurrently one with the other, and fined the sum of $15,000 on Count I.

It is further ordered that a special parole term of five (5) years is imposed.

Special Conditions of Probation:
None.

Additional Conditions of Probation:
In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Commitment Recommendation:
The court orders commitment to the custody of the Attorney General and recommends: No Recommendations.

Signed by U.S. District Judge Howard Bratton,
Jan. 19, 1978.

UNITED STATES DISTRICT COURT
for District of New Mexico

United States of America,
Plaintiff,
v. CR 77-277
Pansy Stone Chavez,
Defendant.

Judgment and Probation/Commitment Order

Counsel:
In the presence of the attorney for the government the defendant appeared in person on January 19, 1978, with Vince D'Angelo, retained counsel.

Plea:
Not Guilty.

Finding & Judgment:
There being a finding of Guilty.

Defendant has been convicted as charged of the offenses of conspiracy to import marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. 963, as charged in Count I of Indictment filed on Nov. 1, 1977, and possession with intent to distribute marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. 841(a)(1), as charged in Count IV of said Indictment.

Sentence or Probation Order:
The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three (3) years, as to each of Counts I and IV, to run concurrently one with the other; execution of the sentence of imprisonment is hereby suspended, and defendant is placed on probation for a period of five (5) years,

upon the usual terms and conditions of probation, and upon the special condition that, pursuant to Public Law 91-492, defendant reside and participate in the programs of the Casa Blanca Halfway House, El Paso, Texas, for a period of six (6) months.

It is ordered that a special parole term of two (2) years is imposed.

Special Conditions of Probation:

It is further ordered that defendant voluntarily surrender by reporting to the Casa Blanca Halfway House, El Paso, Texas, on Monday, February 6, 1978, by 3:00 P.M.

Additional Conditions of Probation:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Commitment Recommendation:

The court orders commitment to the custody of the Attorney General and recommends: No Recommendations.

Signed by U.S. District Judge Howard Bratton,
Jan. 19, 1978.